IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 241 OF 2000

Shri Gangu Gawas,
r/o H. No. 240,
Caranzalem, Tonca,
Near Sharada Mandir,
Panaji, Goa. ... Petitioner

Versus

1. Deputy Collector (REV)
and Land Acquisition
Officer, Panaji,

2. The Chief Town Planner,
Town and Country Planning
Department, Ganga Niwas,
Panaji, Goa,

3. Dr. J. F.Rego (since deceased
through L.Rs.):-
(a) Maria Helena do Rego, Nun,
(b) Maria da Piedade Silveira,
Daughter,
(c) Edgar Franciso Silveira,
son-in-law,
(d) Maria de Lourdes do Rego,
Daughter,
(e) Antonio Augusto do Rego,
son,
(f) Gerardette do Rego,
daughter-in-law,
(g) Manuela Maria Saldanha,
Daughter,
(h) Francisco Saldanha, son-
in-law, all r/o 57, Defence
Colony, Alto Porvorim,
Goa, 403 521, and

4. Smt. Maria Rego, r/o
St. Cruz, Ilhas, Goa. ...Repondents.

Shri Y. V. Nadkarni and Shri J. Cardozo, advocates for the petitioner.

Shri H. R. Bharne, Government Advocate for respondent nos. 1 and 2.

Shri J. E. Coelho Pereira, Senior Advocate with Shri V. Korgaokar, advocate for respondent nos. 3 and 4.

CORAM : F. I. REBELLO, J.

DATE : 1st August, 2003.

ORAL JUDGMENT

Land in which the petitioner claims to be the tenant, of which original respondent nos. 3 and 4 claimed ownership, was acquired by the State. The Land Acquisition Officer apportioned compensation 50% in favour of the petitioner as tenant of the land and 50% in favour of respondent nos. 3 and 4 as owners of the land. The Award would show that respondent nos. 3 and 4 did not dispute that the petitioner is a tenant.

The petitioner herein aggrieved by the apportionment moved under Section 18 of the Land Acquisition Act. The reference sought was that as deemed owner, it is the petitioner alone who would be entitled to the compensation, save the amount which would be payable to respondent nos.3 and 4 under the Goa Daman and Diu Agricultural Tenancy (Fifth Amendment) Act. Accordingly, a reference was made to the Reference Court. the Reference Court, on the reference being received, framed points for consideration and/or issues. Issue no.2 was:-

> "Whether the applicant (before it) proves that in view of the Vth Amendment to the Agricultural Tenancy Act she is deemed owner of the acquired land and therefore entitled to the entire amount of compensation after deducting the amount to which the owner is entitled, as per

scale prescribed under the said Vth Amendment?".

After framing the said issue, the Reference Court found that it was of the opinion that the owner would be required to be added as a party and, after notice added the owners as parties. The respondents/owners thereafter filed written statement whereby they denied that the petitioner herein was a tenant.

2. The petitioner thereafter by an application dated 9th August, 1999, prayed that the compensation be apportioned in terms of the law laid down by this Court in judgment dated 10th July, 1991 in First Appeal No.40/87 and further, on such determination to proceed with the reference only in respect of enhancement of compensation as applied by the applicant in her application dated 12th October, 1992 and the names of respondent nos. 3 and 4 before the Reference Court be struck off as respondents. This application came to be rejected by the Order dated 29th August, 2000. The learned Reference Court held that the reference proceedings being original proceedings and as the petitioner had claimed tenancy and respondent nos. 3 and 4 have denied the same, the dispute between the applicant on one hand and the respondent nos.3 and 4 on the other hand, required to be decided by the Mamlatdar. Only then could the reference proceeded with both for

apportionment as well as enhancement after the applicant obtained a declaration from the Mamlatdar that he is a tenant of respondent nos. 3 and 4. It is this Order which is the subject-matter of the present challenge.

3. At the hearing of this petition, on behalf of the petitioner, it is contended that the Order of the Reference Court referring the matter to the Mamlatdar under the Tenancy Act could not have arisen, considering the fact that the respondent nos.3 and 4 had admitted before the Land Acquisition Officer that the petitioner herein was a tenant and had also not sought apportionment of the compensation as awarded. Reference it is pointed out was sought only by the petitioner herein. Insofar as joinder of parties is concerned, there is no serious dispute raised, though my attention was drawn to the judgments of this Court in **Govind Narayan Lotlikar vs. Savitribai Raghuvira Lotlikar & Ors., 1986 Mh.L.J. 844,** and **Bhau Krishna Shinde thu L.Rs. vs. Vatsala Bhau Dhamale & Ors., 2000(1) All M.R.33.** It seems that the attention of both the learned Single Judges, who have taken the view was not drawn to the decision of the Apex Court in the case of **Sunderlal (in both the appeals) vs. Paramsukhdas & Ors (in both appeals), AIR 1968 SC 366.** However, as the issue has not been raised, I do not propose to enter into that controversy.

4. The question is whether the Reference Court was right in referring the issue to the Mamlatdar under the Tenancy Act. The statement by the respondent nos. 3 and 4 before the Land Acquisition Officer cannot be constituted as an admission by the said respondents at that stage as the Land Acquisition Officer would not be a court or a tribunal, for that matter. Once that be the case and as the respondents were given notice and have raised a plea an issue would arise which has been found. Considering the provisions of the Tenancy Act the issue can only be decided by the Tenancy Court and not by the Reference Court. In the light of that, it was open to the Reference Court to have directed the petitioner herein to seek a declaration from the Mamlatdar in respect of the said issue.

4. On behalf of the petitioner, learned counsel the contends that even if the issue is framed, what will be in issue before the Mamlatdar is not the issue of the 50% compensation paid to him as the respondent nos. 3 and 4 had not disputed the same under Section 18 of the Land Acquisition Act, but only the additional compensation which the petitioner claimed was based on the status of being deemed owners. On behalf of the respondent nos. 3 and 4 learned counsel contends that as the entire issue is open, for decision before the Tenancy Court. The answer would decide as to who is entitled to the compensation.

What the Reference Court has to answer is the reference made to it. The reference is not in respect of the compensation awarded in favour of the petitioner herein. The reference is in respect of the additional compensation by way of apportionment, which the petitioner claims and that is the issue that has to be answered by the Reference Court, apart from any other part of reference. Considering what is in issue in the revision, that issue need not be finally decided as it will be open for consideration before the Reference Court.

With the above observations, the Revision Application stands disposed of.

F. I. REBELLO, J.

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